* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1075 of 2006**

Judgment reserved on: July 23, 2007

% Judgment delivered on: July 31, 2007

Director of Income Tax (Exemption)
Laxmi Nagar, New Delhi. ...Appellant

Through Mrs. P.L. Bansal with
Mr.Vishnu Sharma

Versus

Angreji Hatao Nidhi
A-19, Press Enclave,
New Delhi. ...Respondent

Through Mr. M.P. Rastogi

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

MADAN B. LOKUR, J.

After hearing learned counsel for the parties, we admit this appeal filed under Section 260-A of the Income Tax Act, 1961.

2. The following substantial question of law arises for consideration: -

> "Whether the Income Tax Appellate Tribunal was correct in law in treating the donation of Rs.10 lakhs given by the U.P. Government to the Assessee as a corpus fund and thereby allowing exemption to the Assessee under Section 11(1) of the Income Tax Act, 1961 on such income?"

3. Filing of the paper book is dispensed with.

4. The Assessee is a charitable society engaged in the promotion of Hindi language. According to the Assessee, it received a donation of Rs.10 lakhs from the UP Government along with a letter dated 23rd September, 1994. The Assessing Officer found that the letter did not require the donation to be treated as a corpus donation and on the contrary the Assessee was required to send a utilization certificate in respect of the amount. On this basis, the Assessing Officer treated the donation as financial assistance for the activities of the Assessee and not

as a corpus donation.

5. Both the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal treated the amount as a corpus donation on the ground that the Assessee had deposited the amount in a fixed deposit and had been treating the amount as a corpus donation. The Assessee had also informed the UP Government that the amount was invested in the fixed deposit. It was further held that the failure by the UP Government to mention that the amount was a corpus donation would not detract from the nature of the donation.

6. We are afraid that it is not possible to agree with the view taken by the Tribunal. Section 12 (1) of the Act, which is relevant for our purpose, reads as under: -

> **"12. Income of trusts or institutions from contributions.**
>
> (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and

section 13 shall apply accordingly."

7. A plain reading of the section shows that there must be a specific direction from the donor that the amount donated shall form a part of the corpus of the trust or the institution. The admitted position is that there is no such specific direction in so far as the donation given by the UP Government is concerned. On the other hand, we find that the UP Government, by its letter dated 23rd September, 1994, required the Assessee to indicate the utilization of the amount. It is quite clear that utilization of the donation would be possible only if the amount is not a corpus donation and, therefore, it must follow that the intention of the donor was that the amount was not to be treated as a corpus donation.

8. Under the circumstances, we answer the question in the negative, in favour of the Revenue and against the Assessee.

Madan B. Lokur, J

July 31, 2007 **V.B. Gupta, J**
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Certified that the corrected copy of the judgment has been transmitted in the main Server.